

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

RANDALL TYLER HUTCHISON,

Defendant.

Case No. 2:09-cr-294

JUDGE EDMUND A. SARGUS, JR.

ORDER

This matter is before the Court on the Defendant/Petitioner's Motion to Vacate, Correct, or Set Aside Sentence Pursuant to 28 U.S.C. § 2255. (ECF No. 133.) The Court ordered the government to respond (ECF No. 134), which it timely did (ECF No. 138). Mr. Hutchinson also filed a Motion to Supplement the Record (ECF No. 135), a Writ of Mandamus, Motion to Appoint Special Master, Motion to Special Counsel, Motion to Supplement Record (ECF No. 136), and a Motion to Appoint Special Counsel, Motion to Appoint Special Master, Motion for Discovery, Motion to Appoint Special Judge, and Forward all Motion to U. S. Attorney General (ECF No. 137).

For the reasons set forth below, the Court **TRANSFERS** Defendant's Motion to the United States Court of Appeals for the Sixth Circuit pursuant to 28 U.S.C. § 2244(b)(3)(A). (ECF No. 133) and **DENIES AS MOOT** the remaining motions (ECF Nos. 135, 136, 137).

I.

On June 16, 2023, Randall Hutchinson filed the instant motion for habeas corpus relief pursuant to 28 U.S.C. § 2255. (ECF No. 133.) Mr. Hutchinson previously filed a motion to vacate his sentence on April 2, 2020. (ECF No. 116.) The government responded to the Petition

on May 28, 2020 (ECF No. 120), and on July 24, 2020, the Magistrate Judge issued a Report and Recommendation, recommending that this Court deny the Petitioner's Complaint and order that the action be dismissed. (ECF No. 121.) On December 13, 2020, this Court adopted and affirmed the Report and Recommendation and dismissed Petitioner's 28 U.S.C. § 2255 motion. (ECF No. 124.)

II.

Title 28 of the United States Code, § 2244(b)(3)(A), states that before a second or successive petition for a writ of habeas corpus can be filed in the district court, the applicant shall move in the appropriate circuit court of appeals for an order authorizing the district court to consider the application. Under the Antiterrorism and Effective Death Penalty Act a district court does not have authority to entertain a successive post-conviction motion or petition for a writ of habeas corpus in the absence of an order from the court of appeals authorizing the filing of such successive motion or petition. *Nelson v. United States*, 115 F.3d 136 (2nd Cir. 1997); *Hill v. Hopper*, 112 F.3d 1088 (11th Cir. 1997). Unless the court of appeals has given approval for the filing of a second or successive petition, a district court in the Sixth Circuit must transfer the petition to the United States Court of Appeals for the Sixth Circuit. *In re Sims*, 111 F.3d 45, 47 (6th Cir. 1997) (per curiam). This Court thus lacks authority to entertain a second or successive § 2255 action absent authorization from the Sixth Circuit.

The present Motion filed by Mr. Hutchinson is second or successive. Accordingly, it must and be transferred to the United States Court of Appeals for the Sixth Circuit for consideration.

III.

Based on the foregoing, the Court **TRANSFERS** Defendant's Motion to the United States Court of Appeals for the Sixth Circuit pursuant to 28 U.S.C. § 2244(b)(3)(A) (ECF No. 133) and **DENIES AS MOOT** Defendant's Motion to Supplement the Record (ECF No. 135), Defendant's Writ of Mandamus, Motion to Appoint Special Master, Motion to Special Counsel, Motion to Supplement Record (ECF No. 136), and Defendant's Motion to Appoint Special Counsel, Motion to Appoint Special Master, Motion for Discovery, Motion to Appoint Special Judge, and Forward all Notion to U. S. Attorney General (ECF No. 137).

IT IS SO ORDERED.

7/11/2023
DATE

s/Edmund A. Sargus, Jr.
EDMUND A. SARGUS, JR.
UNITED STATES DISTRICT JUDGE